Federal Reserve Revises and Expands Main Street Lending Program For Small and Mid-sized Businesses

Hinckley Allen Corporate & Business

May 13, 2020

On April 9, 2020, the Federal Reserve announced the creation of a Main Street Lending Program to facilitate lending to small and mid-sized businesses. On April 30, 2020, the Federal Reserve announced revisions to this program, including an expansion of the program's scope and eligibility.

Under the revised Main Street Lending Program, which was established under Section 13(3) of the Federal Reserve Act, the Federal Reserve Bank of Boston will lend money on a recourse basis to a special purpose vehicle (the "SPV"). This SPV will then purchase up to $600 billion in loans from three facilities: the Main Street New Loan Facility (the "MSNLF"), the Main Street Priority Loan Facility (the "MSPLF") and the Main Street Expanded Loan Facility (the "MSELF"). Under the MSNLF and the MSPLF, eligible lenders may originate new term loans to eligible borrowers, while eligible lenders may upsize term loans or revolving credit facilities entered into on or before April 24, 2020 under the MSELF. The Treasury Department will invest $75 billion in the SPV from funds appropriated under Title IV of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act").[1]

The Federal Reserve is in the process of creating the infrastructure to operationalize the Main Street Lending Program and will post updates to this program, including its official launch date, on its **website**. After the program is operational, an interested business must submit an application directly to an eligible lender. The Federal Reserve recommends that interested businesses contact eligible lenders to determine whether such lenders plan to participate in the program and to request additional information on the application process. The Federal Reserve will make available forms of the loan participation agreement, borrower and lender certifications and other agreements required to implement the program, while eligible lenders will be expected to provide loan documents reflecting the terms of the Main Street Lending Program.

A summary of each facility is included below. Note that these terms are subject to change as the Federal Reserve finalizes and commences the Main Street Lending Program.

	MSNLF	MSPLF	MSELF
Term Sheet	Here	Here	Here
Participation	SPV – 95%; Lender – 5%	SPV – 85%; Lender – 15%	SPV – 95%; Lender – 5%
Eligible Loans	Term loan originated after April 24, 2020 with features described below		Term loan or revolving credit facility originated on or before April 24, 2020 with remaining maturity of at least 18 months,[2] provided the upsized tranche is a term loan with features described below
Eligible Lenders	• U.S. federally insured depository institutions (including banks, savings associations or credit		

	unions) • U.S. branches or agencies of foreign banks • U.S. bank holding companies • U.S. savings and loan holding companies • U.S. intermediate holding companies of foreign banking organizations • U.S. subsidiaries of any of the foregoing		
Eligible Borrowers	For profit businesses that: • were established prior to March 13, 2020 • are created or organized in the United States or under the laws of the United States • have significant operations and a majority of their employees based in the United States • were in good financial standing before the COVID-19 pandemic • have either (i) 15,000 or fewer employees[3] or (ii) 2019 annual revenues[4] of $5 billion or less; notably, the affiliation test set forth by the Small Business Administration in 13 CFR 121.301(f) must be applied when determining whether businesses satisfy this criteria • are not one of the businesses deemed ineligible to participate, including banks, finance companies and life insurance companies[5] • have not received specific support pursuant to Subtitle A of Title IV of the CARES Act (available to air carriers and certain related businesses, as well as businesses critical to maintaining national security) • meet the loan classification requirement described below Non-profit organizations are not eligible to participate in the Main Street Lending Program Eligible borrowers can participate in only one Main Street Lending facility or the Primary Market Corporate Credit Facility Eligible borrowers that receive Paycheck Protection Program loans are permitted to borrow under the Main Street Lending Program[6]		
Loan Classification	Any outstanding loans with lender as of December 31, 2019 must have had internal risk rating (based on such lender's risk rating system) equivalent to "pass" in the Federal Financial Institutions Examination Council's ("FFIEC") supervisory rating system as of that date		Underlying loan being upsized must have had internal risk rating (based on such lender's risk rating system) equivalent to "pass" in FFIEC's supervisory rating system as of December 31, 2019
Minimum Loan Amount	$500,000		$10,000,000
Maximum Loan Amount	Lesser of (i) $25 million or (ii) amount that, when added to borrower's existing outstanding and undrawn available debt, does not exceed 4x adjusted 2019 EBITDA	Lesser of (i) $25 million or (ii) amount that, when added to borrower's existing outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA	Lesser of (i) $200 million, (ii) 35% of borrower's existing and undrawn available debt that is *pari passu* in priority and has same secured status, or (iii) amount that, when added to borrower's existing outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA
Adjusted EBITDA Methodology	Lender must use methodology it used when extending credit to borrower or to similarly situated borrowers on or before April 24, 2020		Lender must use methodology it used when originating or amending underlying loan being upsized on or before April 24, 2020
Maturity	4 years		
Interest Rate	Adjustable rate of LIBOR (1 or 3 month) + 300 basis points		
Deferment	One year deferment of principal and interest payments (unpaid interest will be capitalized)		

	(unpaid interest will be capitalized)		
Repayment	1/3 at end of second and third years and at maturity	15% at end of second and third years and 70% at maturity	15% at end of second and third years and 70% at maturity
Prepayment	Yes, without penalty		
Forgiveness	No		
Priority & Security	May be secured or unsecured Loan cannot be contractually subordinated in terms of priority to borrower's other loans or debt instruments at origination or at any time during loan's term[7]	May be secured or unsecured Loan must be senior to or *pari passu* with borrower's other loans and debt instruments (other than mortgage debt) in terms of priority and security at origination and while loan is outstanding	May be secured or unsecured; must be secured if underlying loan being upsized is secured[8] Upsized tranche must be senior to or *pari passu* with borrower's other loans and debt instruments (other than mortgage debt) in terms of priority and security at upsizing and while upsized tranche is outstanding
Fees	Borrower must pay origination fee of up to 100 basis points Lender must pay transaction fee of 100 basis points, and may require borrower to pay this fee SPV will pay lender 25 basis points of its participation per annum for loan servicing		Borrower must pay origination fee of up to 75 basis points of upsized tranche Lender must pay transaction fee of 75 basis points of upsized tranche, and may require borrower to pay this fee SPV will pay lender 25 basis points of its participation in upsized tranche per annum for loan servicing
Employee Retention Requirements	***Borrowers should make commercially reasonable efforts to maintain payroll and retain employees while loan or upsized tranche is outstanding***; more specifically, each borrower "should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor" Businesses that have laid off or furloughed employees due to COVID-19 may still apply for a Main Street loan		
Borrower Certifications & Covenants	Borrower cannot (i) repay principal balance of, or pay any interest on, any debt until loan or upsized tranche is repaid in full (unless debt or interest payment is mandatory and due), or (ii) seek to cancel or reduce any committed lines of credit with any lender;[9] however, borrower of MSPLF loan may, at time of origination, refinance existing debt owed by such borrower to another lender Borrower must certify that it has a reasonable basis to believe, as of date of origination or upsizing, and after giving effect to loan or upsized tranche, that it has ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during such period ***Until twelve months after such loan or upsized tranche is repaid***, borrower cannot: • repurchase any of its or its parent's equity securities that are listed on a national securities exchange, except if required under a contractual obligation in effect as of March 27, 2020 • pay dividends or make other capital distributions with respect to its common stock, provided that such restrictions do not apply to distributions made by S corporations or other pass-through entities to extent reasonably required to cover owners' tax obligations in respect of such entities' earnings		

	• for any officer or employee whose total compensation (salary, bonuses, awards of stock and other financial benefits) for 2019 ("2019 total compensation") exceeded $425,000, (i) pay such officer or employee total compensation during any consecutive 12 months in excess of 2019 total compensation or (ii) provide any severance or other benefits upon termination that exceeds twice the 2019 total compensation received by such officer or employee • for any officer or employee whose 2019 total compensation exceeded $3,000,000, pay such officer or employee total compensation during any consecutive 12 months in excess of $3,000,000 plus 50% of the excess over $3,000,000 of 2019 total compensation received by such officer or employee Borrower must certify that it is eligible to participate in the Main Street Lending Program (including in light of CARES Act conflicts of interest rules), and must make any other certifications required by applicable statutes and regulations
Lender Certifications & Covenants	Lender cannot (i) request that borrower repay any debt that lender extended to such borrower, or pay interest on such outstanding obligations, until loan or upsized tranche is repaid in full (unless debt or interest payment is mandatory and due, or in cases of default and acceleration), or (ii) cancel or reduce any existing committed lines of credit to borrower (except in event of default) [10] Lender must certify that it has used the adjusted EBITDA methodology described above Lender must certify that it is eligible to participate in the Main Street Lending Program (including in light of CARES Act conflicts of interest rules), and must make any other certifications required by applicable statutes and regulations.

Lenders are expected to assess each potential borrower's financial condition at the time such potential borrower submits an application, and to apply their own underwriting standards in evaluating such potential borrower's financial condition and creditworthiness. Importantly, the requirements outlined by the Federal Reserve are minimum requirements, and lenders may impose additional criteria. Not all eligible businesses will be approved for Main Street loans, or will receive the maximum permitted amount.

We are here to help answer specific questions and offer advice on your options. Please contact any member of our Corporate & Business Group to discuss.

[1] For information on the relief available for mid-sized and large businesses under Title IV of the CARES Act, see **here**.

[2] Lenders may extend the maturity date at the time of upsizing to satisfy this requirement.

[3] Businesses must follow the framework set forth by the Small Business Administration in 13 CFR 121.106 to determine employee headcount. Among other things, businesses should include all of their and their affiliates' full-time, part-time, seasonal and other employed persons (but not volunteers and independent contractors). Businesses should use the average of the total number of persons employed by the borrower and its affiliates for each pay period over the 12 months prior to origination or upsizing.

[4] To determine 2019 annual revenues, a business must aggregate its revenues with the revenues of its affiliates, using either (i) its and its affiliates' annual revenue per its 2019 GAAP-based audited financial statements or (ii) its and its affiliates' annual receipts (as defined in 13 CFR 121.104(a)) for the 2019 fiscal year, as reported to the IRS. If audited financial statements or annual receipts for the 2019 fiscal year are not yet available, a potential borrower or its affiliate may use its most recent audited financial statements or annual receipts.

[5] Ineligible businesses are those businesses listed in 13 CFR 120.110(b)–(j) and (m)–(s), as modified by the Small Business Administration's regulations implementing the Paycheck Protection Program. Hedge funds and private equity firms are likely ineligible to participate in the Main Street Lending Program, in light of recent guidance by the Small

Business Administration concluding that these businesses are ineligible to participate in the Paycheck Protection Program.

[6] Additional information on the Paycheck Protection Program is available **here**, **here** and **here**.

[7] The requirement that an MSNLF loan not be contractually subordinated to any of the borrower's other loans or debt instruments does not prevent:

- issuance of a secured MSNLF loan (including in a second lien or other capacity), regardless of whether the borrower has an outstanding secured loan of any lien position or maturity;
- issuance of an unsecured MSNLF loan, regardless of the term or security status of the borrower's existing indebtedness; or
- the borrower from taking on new secured or unsecured debt after receiving an MSNLF loan, as long as such new debt does not have a higher contractual priority than the MSNLF loan.

[8] Any collateral that secures the underlying loan must also secure the upsized tranche on a pro rata basis. Lenders may also require borrowers to pledge additional collateral as a condition of upsizing.

[9] These restrictions do not prohibit a borrower, during the term of the loan or upsized tranche, from:

- repaying a line of credit (including a credit card) in accordance with its normal course of business usage;
- taking on and paying additional debt obligations required in the normal course of business and on standard terms (including inventory and equipment financing), provided such debt is secured by newly acquired property (such as inventory or equipment) and is of equal or lower priority than the loan or upsized tranche; or
- refinancing maturing debt.

Moreover, a lender is not prohibited from accepting regularly scheduled, periodic repayments on a line of credit in accordance with the borrower's normal course of business usage.

[10] Despite this requirement, the following are permitted: reduction or termination of uncommitted lines of credit, expiration of existing lines of credit in accordance with their terms, and reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.

Associated People

James R. Burke

Brian E. Tierney

Meaghan L. Krupa

Richard A. Goulding

Related Practices

Corporate & Business

Coronavirus (COVID-19) Response Team